

Before the  
UNITED STATES COPYRIGHT OFFICE  
LIBRARY OF CONGRESS  
Washington, DC

GENERAL COUNSEL  
OF COPYRIGHT

JAN 16 1998

RECEIVED

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In the Matter of :  
:  
Mechanical and Digital :  
Phonorecord Delivery Rate :  
Adjustment Proceeding :  
:  
- - - - - x

Docket No. 96-4 CARP DPRA

MOTION TO FILE LATE A  
NOTICE OF INTENT TO PARTICIPATE

Broadcast Music, Inc. ("BMI") hereby requests that the Copyright Office (the "Office") accept late its notice of intent to participate in the above-captioned proceeding. On December 29, 1997, BMI filed comments on the proposed rate filed by the National Music Publishers' Association ("NMPA"), the Recording Industry Association of America ("RIAA") and The Songwriters Guild of America ("SGA") in accordance with the Office's order dated November 18, 1997. 62 Fed. Reg. 63506 (1997). BMI did not file a Notice of Intent to Participate because the Office stated that it would adopt the agreed upon rates (assuming the rates were unopposed) and because BMI supported the proposed rates.

On December 19, 1997, two organizations -- the United States Telephone Association and the Coalition of Internet Webcasters -- filed Notices of Intent to Participate and comments on the proposed regulations. BMI believes that resolution of certain of the

comments may indirectly implicate the applicability of the public performing right in 17 U.S.C. § 106(4) to digital transmissions. BMI does not believe that empanelling a Copyright Arbitration Royalty Panel is necessary to resolve the issues raised by the commentors because these issues are legal issues and are outside the scope of this proceeding. However, in the event of a proceeding, BMI should be allowed to participate.

BMI represents the public performing right in approximately three million musical works. Accordingly, BMI's participation is necessary.

Because BMI filed its comments on the proposed rate within the appropriate time-period, no party to the proceeding could be prejudiced by BMI's participation in the proceeding, especially since the parties filing opposition comments have not previously participated in negotiating these rates.

The Office has previously accepted a late-filed notice of intent to participate (over one year late) where such acceptance would not prejudice the other parties to the proceeding. See Order, In the Matter of Adjustment of the Rates for Noncommercial Educational Broadcasting Compulsory License, Docket No. 96-6 CARP NCBRA at 3-4 (July 30, 1997). Therefore, BMI respectfully requests that the Office accept the attached notice of intent to participate in the above-captioned proceeding.

Respectfully submitted,

BROADCAST MUSIC, INC.

*Marvin L. Berenson /mjr*

Marvin L. Berenson  
Joseph J. DiMona  
BMI  
320 West 57th Street  
New York, NY 10019  
(212) 830-2533

*Michael J. Remington*

Michael J. Remington  
George Galt  
Drinker Biddle & Reath LLP  
Suite 900  
901 15th Street, NW  
Washington, DC 20005  
(202) 842-8800

January 16, 1998

CERTIFICATE OF SERVICE

I, Cynthia A. Queen, hereby certify that on this 16th day of January, 1998, a copy of the foregoing "Motion to File Late a Notice of Intent to Participate" was served by Overnight Express mail, on the following parties:

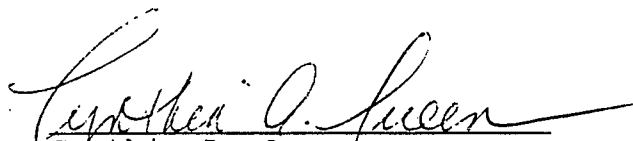
Cary Sherman  
Recording Industry Association  
of America  
1020 19th Street, NW  
Suite 200  
Washington, DC 20036

Bruce G. Joseph  
Wiley, Rein & Fielding  
1776 K Street, NW  
Washington, DC 20006

Carey R. Ramos  
Paul, Weiss, Rifkind, Wharton  
& Garrison  
1285 Avenue of the Americas  
New York, NY 10019-6064

Seth D. Greenstein  
McDermott, Will & Emery  
600 Thirteenth Street, NW  
Washington, DC 20005-3096

James J. Schweitzer  
The Cuneo Law Group, P.C.  
317 Massachusetts Avenue, N.E.  
Suite 300  
Washington, DC 20002

  
Cynthia A. Queen

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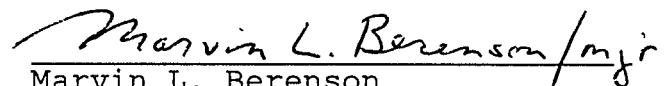
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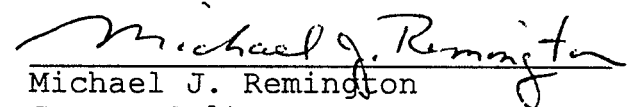
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Broadcast Music, Inc. ("BMI") hereby files its notice of  
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Respectfully submitted,

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